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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,520	01/18/2002	Harry Giewercer		7761

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EXAMINER

HOOLAHAN, AMANDA J

ART UNIT PAPER NUMBER

2859

DATE MAILED: 10/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,520

Applicant(s)

GIEWERCER, HARRY

Examiner

Amanda J Hoolahan

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-- Th MAILING DATE of this communication appears on the cov r sh et with th correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 39 is rejected under 35 U.S.C. 102(b) as being unpatentable by USPN 4,802,438 to DeJonge.

DeJonge discloses a reminder device comprising a cylindrical container (33) having an exterior side surface; a deformable continuous loop member (1) mounted around said exterior side surface of said container, the mounted loop member rotatable to each of a plurality of selected positions (55, 57, 59).

3. Claims 40-46, 50-52, 55, and 57-58 are rejected under 35 U.S.C. 102(b) as being unpatentable by USPN 5,482,163 to Hoffman.

Hoffman discloses a reminder device comprising a cylindrical container (102) having an exterior side surface; a deformable substantially rectilinear band member (106); means (column 3, lines 47-48) for forming said band member into a loop mounted around said exterior side surface of said container, the mounted band member rotatable about said exterior side surface of said container to each of a plurality of selected positions; said band member defines a structural area for engagement; further comprising a deformable band support member (120), the band support member having means for attachment (column 3, lines 55-56) to the side of said

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container and defining a structural area (118) adapted to receive engagement therewith said band member; said band support member and said band member include co-operating indicia (122) which include an arrangement of times co-operating with a pointer (110) adapted to point to any one of said times; band member has gripping means (45) to aid grasping said band for displacement; band support member has anti-displacement means (44) for limiting displacement of said band member; normal use of the device disclosed by Hoffman comprise a method for indicating medication dosage time, comprising providing a cylindrical container of medicine, the container having an exterior side surface; providing a band member, the band member being deformable, substantially rectilinear, and defining a structural area for engagement; providing a deformable band support member defining a structural area adapted to receive engagement therewith said band member, where said band and said band support include co-operating indicia for indicating a medication dosage time; attaching said band support member to said medication container; mounting said band member on said exterior side surface of said container such that said band member forms a loop around said side surface; rotating said mounted band about said side surface of said container until the co-operating indicia indicate a desired medication time; wherein the co-operating indicia include an arrangement of times co-operating with a pointer adapted to point to any one of said times; wherein said step of mounting is performed prior to said step of attaching.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 47-49, 53, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of USPN 3,757,441 to Baustin.

Hoffman discloses the device as described above in paragraph 3 including the band support member being a deformable prescription label.

Hoffman does not disclose the indicia on the device being inscribed; and the deformable band support member being adhesively attached to said container.

With respect to claim 47: Baustin discloses a device having indicia (12) that is inscribed. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to make the indicia, as taught by Hoffman, to be inscribed, as taught by Baustin, in order for the indicia to be permanent on the device which runs less of a risk of the indicia rubbing off.

With respect to claims 48-49, 53, and 56: Baustin discloses a band member being adhesively attached to a container (column 2, lines 57-60). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to attach the band support member to the container, as taught by Hoffman, with an adhesive, as taught by Baustin, in order for the device to have a more secure attachment to the medicament container.

6. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of USPN 6,213,518 to Raming.

Hoffman discloses the device as described above in paragraph 3.

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Hoffman does not disclose the device comprising the deformable prescription label including a perforation separating a band support portion.

Raming discloses a deformable label (20) including a perforation (74). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a perforation, as taught by Raming, to the label, disclosed by Hoffman, in order for the user to be able to easily tear off and discard excess material if the device is needed to be used on a smaller container.

Response to Arguments

7. Applicant's arguments with respect to claims 19-38 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. USPN 2,450,949 to Gattuccio et al and USPN 3,818,858 to Kramer et al disclose reminder devices having band members.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda J Hoolahan whose telephone number is (703) 308-0139. The examiner can normally be reached on Monday through Friday 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F Gutierrez can be reached on (703) 308-3875. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

ajh
October 7, 2003



Diego Gutierrez
Supervisory Patent Examiner
Technology Center 2800